MONTANA LEGISLATIVE HISTORY

Chapter 420 1995

Bill H ~~376~~ S 376 Original bill & history ✓ C

H. Committee on Bus + Ind. J.D. - Health Cons. S. Committee on Bus + Ind

Hearing Date(s)		C	Hearing Date(s)		C
	3/9	✓ C		2/17	✓ C
	3/16	✓ C			C
		C			C
		C			C
Date Out		C			

Did this bill originate in an interim committee? ___ Yes ✓ No

Committee _____ Report _____

Chapter Page

76-5-102, 76-5-103, 76-5-106, 76-5-109, 76-5-201, 76-5-202, 76-5-203, 76-5-204, 76-5-205, 76-5-206, 76-5-208, 76-5-209, 76-5-301, 76-5-302, 76-5-402, 76-5-404, 76-5-405, 76-5-406, 76-11-101, 76-11-102, 76-12-104, 76-13-102, 76-13-132, 76-13-302, 76-13-401, 76-13-415, 76-13-501, 76-13-601, 76-15-103, 76-15-201, 76-15-203, 76-15-204, 76-15-205, 76-15-206, 76-15-207, 76-15-209, 76-15-210, 76-15-211, 76-15-212, 76-15-213, 76-15-216, 76-15-301, 76-15-305, 76-15-314, 76-15-319, 76-15-408, 76-15-505, 76-15-530, 76-15-721, 76-15-725, 76-15-726, 76-15-727, 76-15-803, 76-15-804, 76-15-806, 76-15-807, 76-15-808, 76-15-809, 76-16-103, 76-16-104, 76-16-105, 76-16-109, 76-16-202, 76-16-203, 76-16-207, 76-16-209, 76-16-210, 76-16-211, 76-16-213, 76-16-307, 76-16-319, 76-16-325, 77-1-101, 77-1-113, 77-1-211, 77-1-706, 77-1-707, 77-2-107, 77-2-215, 77-2-302, 77-2-327, 77-2-342, 77-2-401, 77-5-104, 77-5-302, 77-5-402, 77-6-306, 80-8-110, 80-8-201, 80-8-305, 80-15-102, 80-15-104, 80-15-105, 80-15-107, 80-15-108, 80-15-201, 80-15-202, 80-15-203, 80-15-211, 80-15-213, 80-15-216, 80-15-217, 80-15-301, 80-15-302, 80-15-403, 80-15-411, 80-15-412, 81-2-106, 81-9-202, 81-9-233, 81-21-103, 81-22-208, 81-22-209, 81-22-301, 81-22-403, 81-22-404, 81-22-414, 81-22-421, 81-23-103, 82-4-102, 82-4-103, 82-4-111, 82-4-112, 82-4-123, 82-4-129, 82-4-141, 82-4-203, 82-4-204, 82-4-205, 82-4-223, 82-4-226, 82-4-227, 82-4-231, 82-4-232, 82-4-239, 82-4-240, 82-4-242, 82-4-251, 82-4-254, 82-4-303, 82-4-306, 82-4-308, 82-4-311, 82-4-321, 82-4-322, 82-4-323, 82-4-331, 82-4-332, 82-4-334, 82-4-335, 82-4-336, 82-4-337, 82-4-338, 82-4-339, 82-4-340, 82-4-341, 82-4-342, 82-4-349, 82-4-352, 82-4-360, 82-4-362, 82-4-403, 82-4-421, 82-4-422, 82-4-423, 82-4-424, 82-4-425, 82-4-426, 82-4-427, 82-4-431, 82-4-432, 82-4-433, 82-4-434, 82-4-441, 85-1-102, 85-1-201, 85-1-203, 85-1-204, 85-1-206, 85-1-209, 85-1-210, 85-1-211, 85-1-301, 85-1-303, 85-1-305, 85-1-306, 85-1-307, 85-1-308, 85-1-309, 85-1-310, 85-1-321, 85-1-323, 85-1-502, 85-1-503, 85-1-504, 85-1-505, 85-1-508, 85-1-509, 85-1-514, 85-2-102, 85-2-105, 85-2-112, 85-2-113, 85-2-122, 85-2-141, 85-2-304, 85-2-306, 85-2-311, 85-2-316, 85-2-319, 85-2-330, 85-2-331, 85-2-336, 85-2-341, 85-2-343, 85-2-426, 85-2-436, 85-2-437, 85-2-502, 85-2-506, 85-2-507, 85-2-512, 85-2-514, 85-2-520, 85-2-603, 85-2-701, 85-2-806, 85-3-101, 85-3-102, 85-3-104, 85-3-201, 85-3-202, 85-3-203, 85-3-206, 85-3-207, 85-3-212, 85-3-214, 85-6-109, 85-7-102, 85-9-104, 85-9-202, 85-9-204, 85-20-109, 87-1-223, 87-1-224, 87-1-303, 87-1-601, 87-3-106, 90-2-140, 90-2-141, 90-4-102, 90-4-103, 90-4-602, 90-4-1002, 90-6-207, 90-6-307, 90-6-703, AND 90-15-102, MCA; REPEALING SECTIONS 2-15-3201, 2-15-3202, 2-15-3302, 2-15-3306, 75-10-628, 76-11-203, 76-11-204, 80-15-219, 85-1-202, 85-1-212, AND 85-2-519, MCA; AND PROVIDING AN EFFECTIVE DATE. *1540*

419 *(Senate Bill No. 347; Crismore)* AN ACT AUTHORIZING THE DEPARTMENT OF STATE LANDS TO NEGOTIATE RECIPROCAL ACCESS TO FACILITATE THE MANAGEMENT OF ISOLATED STATE FOREST LANDS; ALLOWING THE BOARD TO WAIVE SURVEY REQUIREMENTS; AND DEFINING "ANALYSIS REQUIREMENTS". *1879*

420 *(Senate Bill No. 376; Christiaens)* AN ACT PROVIDING FOR THE REGULATION OF SELF-FUNDED MULTIPLE EMPLOYER WELFARE ARRANGEMENTS; PROVIDING FOR EXCEPTIONS FROM REGULATION; AUTHORIZING THE COMMISSIONER OF INSURANCE TO ISSUE AND REVOKE CERTIFICATES OF AUTHORITY; PROVIDING FOR ELIGIBILITY AND APPLICATIONS FOR CERTIFICATES; PROVIDING MINIMUM RESERVE AND FUNDING REQUIREMENTS; REQUIRING CERTAIN REPORTS; PROVIDING PENALTIES; PROVIDING FOR THE APPLICATION OF THE MONTANA INSURANCE CODE; REQUIRING CERTAIN DISCLOSURES IN INSURANCE POLICIES ISSUED BY SELF-FUNDED MULTIPLE EMPLOYER WELFARE ARRANGEMENTS; AND AMENDING SECTION 33-1-1111, MCA. *1879*

2/13	FISCAL NOTE REQUESTED		
2/16	HEARING		
2/17	FISCAL NOTE RECEIVED		
2/17	FISCAL NOTE PRINTED		
2/20	COMMITTEE REPORT—BILL PASSED		
2/21	REVISED FISCAL NOTE PRINTED		
2/21	2ND READING PASSED	33	17
2/22	3RD READING PASSED	33	17
	TRANSMITTED TO HOUSE		
2/27	FIRST READING		
2/27	REFERRED TO BUSINESS & LABOR		
3/06	HEARING		
3/07	COMMITTEE REPORT—BILL CONCURRED		
3/11	2ND READING CONCURRED	71	28
3/14	3RD READING CONCURRED	68	31
	RETURNED TO SENATE		
3/16	SIGNED BY PRESIDENT		
3/18	SIGNED BY SPEAKER		
3/20	TRANSMITTED TO GOVERNOR		
3/24	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 243		
	EFFECTIVE DATE: 07/01/95		

SB 376 INTRODUCED BY CHRISTIAENS, ET AL.

REGULATE SELF-FUNDED MULTIPLE EMPLOYER WELFARE ARRANGEMENTS

2/11	INTRODUCED		
2/11	FIRST READING		
2/11	REFERRED TO BUSINESS & INDUSTRY		
2/13	FISCAL NOTE REQUESTED		
2/17	HEARING		
2/17	COMMITTEE REPORT—BILL PASSED		
2/18	FISCAL NOTE RECEIVED		
2/18	FISCAL NOTE PRINTED		
2/18	2ND READING PASSED	50	0
2/20	3RD READING PASSED	50	0
	TRANSMITTED TO HOUSE		
2/20	FIRST READING		
2/20	REFERRED TO BUSINESS & LABOR		
3/04	REREFERRED TO JOINT HEALTH CARE SELECT		
3/09	HEARING		
3/20	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/24	2ND READING CONCURRED AS AMENDED	92	6
3/27	3RD READING CONCURRED	87	8
	RETURNED TO SENATE WITH AMENDMENTS		
4/01	2ND READING AMENDMENTS CONCURRED	46	0
4/03	3RD READING AMENDMENTS CONCURRED	45	0
4/08	SIGNED BY PRESIDENT		
4/08	SIGNED BY SPEAKER		
4/10	TRANSMITTED TO GOVERNOR		
4/13	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 420		
	EFFECTIVE DATE: 10/01/95		

SENATE BILL NO. 376

INTRODUCED BY Christiaens Mott

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE REGULATION OF SELF-FUNDED MULTIPLE EMPLOYER WELFARE ARRANGEMENTS; AUTHORIZING THE COMMISSIONER OF INSURANCE TO ISSUE AND REVOKE CERTIFICATES OF AUTHORITY; PROVIDING FOR ELIGIBILITY AND APPLICATIONS FOR CERTIFICATES; PROVIDING MINIMUM RESERVE AND FUNDING REQUIREMENTS; REQUIRING CERTAIN REPORTS; PROVIDING PENALTIES; PROVIDING FOR THE APPLICATION OF THE MONTANA INSURANCE CODE; AND AMENDING SECTION 33-1-1111, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short Title.** [Sections 1 through 14] may be cited as the "Self-Funded Multiple Employer Welfare Arrangement Regulation Act".

NEW SECTION. **Section 2. Purpose.** The purposes of [sections 1 through 14] are to:

(1) provide for the authorization and registration of self-funded multiple employer welfare arrangements;

(2) regulate self-funded multiple employer welfare arrangements in order to ensure the financial integrity of the arrangements;

(3) provide reporting requirements for self-funded multiple employer welfare arrangements; and

(4) provide for sanctions against self-funded multiple employer welfare arrangements organized and maintained in Montana that do not comply with [sections 1 through 14].

NEW SECTION. **Section 3. Definitions.** As used in [sections 1 through 14], unless a contrary intent appears, the following definitions apply:

(1) "Allowable benefits" means a benefits relating to medical, surgical, or hospital care in the event of sickness, accident, disability, or any combination of sickness, accident, or disability.

(2) (a) "Bona fide association" means an association of employers that has been in existence for a period of not less than 5 years prior to sponsoring a self-funded multiple employer welfare arrangement,

during which time the association has engaged in substantial activities relating to the common interests c member employers, and that continues to engage in substantial activities in addition to sponsoring a arrangement.

(b) Notwithstanding subsection (2)(a), an association that was formed and began sponsoring a arrangement prior to [the effective date of sections 1 through 14] is not subject to the requirement that th association be in existence for 5 years prior to sponsoring an arrangement.

(3) "Claims liability" means the total of all incurred and unpaid claims for allowable benefits unde a self-funded multiple employer welfare arrangement that are not reimbursed or reimbursable by excess loss insurance, subrogation, or other sources.

(4) "Multiple employer welfare arrangement" means a multiple employer welfare arrangement as defined by 29 U.S.C. 1002.

(5) "Reserves" means the excess of the assets of a self-funded multiple employer welfare arrangement minus the liabilities of the arrangement. The liabilities of a self-funded multiple employer welfare arrangement include the claims liability of the arrangement.

(6) "Self-funded multiple employer welfare arrangement" or "arrangement" means a multiple employer welfare arrangement that does not provide for payment of benefits under the arrangement solely through a policy or policies of insurance issued by one or more insurance companies licensed under this title.

NEW SECTION. **Section 4. Certificate of authority.** (1) Except as provided in subsection (3), a person may not establish or maintain a self-funded multiple employer welfare arrangement in Montana unless the arrangement first obtains a certificate of authority from the commissioner.

(2) A self-funded multiple employer welfare arrangement is considered to be established or maintained in Montana if one or more of the employer members participating in the arrangement is either domiciled in or maintains its principal place of business in Montana.

(3) A self-funded multiple employer welfare arrangement established and maintained in Montana prior to January 1, 1995, has until [6 months following the effective date of sections 1 through 14] to file an application for a certificate of authority. An arrangement that files an application for a certificate of authority by that date is considered to have been issued a certificate of authority unless the commissioner finally denies the arrangement's application for a certificate of authority.

NEW SECTION. **Section 5. Eligibility for certificate of authority.** The commissioner may not issue a certificate of authority to a self-funded multiple employer welfare arrangement unless the arrangement establishes to the reasonable satisfaction of the commissioner that the following requirements have been satisfied by the arrangement:

(1) the employers participating in the self-funded multiple employer welfare arrangement are either engaged in the same trade, profession, or industry or the employers participating in the arrangement are members of a bona fide association;

(2) the employers participating in the arrangement exercise control over the arrangement, as follows:

(a) Subject to subsection (2)(b), control exists if the employers participating in the arrangement have the right to elect at least 75% of the individuals designated in the arrangement's organizational documents as having control over the operations of the arrangement and the individuals designated in the arrangement's organizational documents in fact exercise control over the operation of the arrangement.

(b) The use of a third-party administrator to process claims and to assist in the administration of the arrangement is not evidence of the lack of exercise of control over the operation of the arrangement.

(3) the arrangement provides only allowable benefits. However, an arrangement may provide life insurance coverage to its participants if the coverage is provided pursuant to contracts of insurance that comply with Title 33, chapter 20, parts 10 through 12.

(4) the arrangement provides allowable benefits to not less than 2 employers and not less than 75 employees;

(5) the arrangement may not solicit participation in the arrangement from the general public. However, the arrangement may employ or independently contract with a licensed insurance producer who may be paid a commission or other remuneration to enroll employers in the arrangement, and employees of the arrangement, employees of the association sponsoring the arrangement, or employees of affiliates of the association, other than licensed insurance producers, may enroll employers in the arrangement if the employees do not receive a commission or other remuneration in addition to their customary compensation for enrolling employers.

(6) the arrangement is not organized or maintained solely as a conduit for the collection of premiums and the forwarding of premiums to an insurance company. However, it is permissible for a self-funded multiple employer welfare arrangement to act as a conduit for the collection and forwarding of

premiums for life insurance coverage pursuant to subsection (3).

NEW SECTION. **Section 6. Requirements applicable only to arrangements organized after effective date of sections 1 through 14].** (1) In addition to the requirements of [section 5], self-fun multiple employer welfare arrangements formed after [the effective date of sections 1 through 14] subject to the following requirements:

(a) arrangements shall maintain a calendar year for operations and reporting purposes unless commissioner consents to a fiscal year;

(b) arrangements shall satisfy one of the following requirements:

(i) (A) the arrangement shall deposit $200,000 with the commissioner pursuant to Title 33, cha 2, part 6, to be used for the payment of claims in the event that the arrangement becomes insolvent;

(B) the arrangement shall submit to the commissioner a written plan of operation that, in reasonable discretion of the commissioner, ensures the financial integrity of the arrangement; or

(ii) the arrangement demonstrates to the reasonable satisfaction of the commissioner the abi of the arrangement to remain financially solvent, for which purpose the commissioner may consider:

(A) the financial condition of the employers intending to participate in the arrangement;

(B) the pro forma financial statements of the self-funded multiple employer welfare arrangeme

(C) the types and levels of excess loss insurance coverage, including the attachment points of coverage and whether the points are reflected as annual or monthly levels;

(D) whether a deposit is required for each employee covered under the arrangement equal to at le one month's cost of providing benefits under the arrangement;

(E) the experience of the individuals who will be involved in the management of the arrangeme including employees, independent contractors, and consultants; and

(F) other factors as reasonably determined by the commissioner to be relevant to a determinati of whether the arrangement is able to operate in a financially solvent manner.

(2) Financial information relating to the employers is subject to the confidentiality provisions 33-1-409(6).

(3) The commissioner may require that the articles, bylaws, agreements, trusts, or other documer or instruments describing the rights and obligations of the employers, employees, and beneficiaries of t arrangement provide that employers participating in the arrangement are subject to pro rata assessment f

all liabilities of the arrangement.

(4) Arrangements shall maintain excess loss insurance coverage covering 100% of claims in excess of the designated attachment point. The commissioner may waive the requirement of excess loss insurance coverage.

(5) An arrangement shall submit its base contribution rates for participation under the arrangement for its initial year of operations for review and approval by the commissioner.

(6) The commissioner may require continued compliance with respect to the conditions set forth in this section as a condition of granting a certificate of authority to an arrangement. The commissioner may waive continued compliance with respect to the conditions in this section at any time after the commissioner has granted a certificate of authority to an arrangement.

NEW SECTION. **Section 7. Application for certificate of authority.** A self-funded multiple employer welfare arrangement shall apply for a certificate of authority on a form prescribed by the commissioner and shall submit the application, together with the following documents, to the commissioner:

(1) a copy of all articles, bylaws, agreements, trusts, or other documents or instruments describing the rights and obligations of the employers, employees, and beneficiaries of the arrangement;

(2) a copy of the summary plan description of the arrangement filed or required to be filed with the United States department of labor, together with any amendments to the description;

(3) evidence of coverage of or letters of intent to participate executed by at least 2 employers providing allowable benefits to at least 75 employees;

(4) a copy of the arrangement's most recent year's financial statements or, if the arrangement has been in existence for less than 1 year, pro forma financial statements that must include, at a minimum, a balance sheet, an income statement, a statement of changes in financial position, and an actuarial opinion that the unpaid claim liability of the arrangement satisfies the standards of 33-2-514;

(5) proof that the arrangement maintains or will maintain fidelity bonds required by the United States department of labor pursuant to the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001, et seq.;

(6) a copy of any excess loss insurance coverage policies maintained or proposed to be maintained by the arrangement;

(7) biographical reports on forms prescribed by the national association of insurance commissioners

evidencing the general trustworthiness and competence of each individual who is serving or who will serv as an employee or fiduciary of the arrangement; and

(8) a statement executed by a representative of the arrangement certifying, to the best knowledg and belief of the representative, that:

(a) the arrangement is in compliance with requirements of [section 5];

(b) the arrangement is in compliance with the requirements of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001, et seq., or a statement of any requirements with which the arrangement is not in compliance and a statement of proposed corrective actions; and

(c) the arrangement is in compliance with requirements of [sections 8 and 9].

NEW SECTION. **Section 8. Minimum reserve requirements.** Self-funded multiple employer welfare arrangements shall establish by the end of the first year of operations of the arrangement and shall maintain as of the end of each year of operations reserves equal to at least 30% of the unpaid claims liability of the arrangement.

NEW SECTION. **Section 9. Minimum funding levels.** A self-funded multiple employer welfare arrangement shall establish and maintain contribution rates for participation under the arrangement that satisfy either of the following requirements:

(1) contribution rates must equal or exceed the sum of projected claims liability for the year, plus all projected costs of operation of the arrangement for the year, plus an amount equal to any deficiency in the reserves of the arrangement for the prior year, minus an amount equal to the reserves of the arrangement in excess of the minimum required level of reserves; or

(2) contribution rates must equal or exceed a funding level established by a certified actuarial report obtained by the arrangement.

NEW SECTION. **Section 10. Issuance of certificate of authority.** (1) The commissioner shall grant or deny an application for a certificate of authority within 180 days of the date that a completed application, together with the items designated in [section 7], is submitted to the commissioner.

(2) The commissioner shall grant the application of an arrangement that satisfies the applicable requirements of [sections 5 through 9].

(3) The commissioner shall deny the application of an arrangement that does not satisfy the applicable requirements of [sections 5 through 9]. Denial of an application for a certificate of authority is considered a contested case under the Montana Administrative Procedure Act.

(4) A certificate of authority granted to an arrangement is effective unless revoked by the commissioner under [section 12].

NEW SECTION. **Section 11. Reporting.** (1) A self-funded multiple employer welfare arrangement shall comply with the reporting requirements of this section.

(2) Within 3 months following the close of the arrangement's year of operations, the arrangement shall file with the commissioner, on forms prescribed by the commissioner:

(a) a statement of financial condition;

(b) a statement of change in financial conditions accompanied by an actuarial opinion that the unpaid claim liability of the arrangement satisfies the standards of 33-2-514;

(c) a statement of its contribution rates for the ensuing year;

(d) a statement of operations for the previous year;

(e) if the total payments to the arrangement for participation during the prior year of operations exceeded the sum of $2 million, an audit satisfying the requirements of the commissioner's rules governing annual audited reports, certified by an independent certified public accountant. The filing date for the audit must be extended by the commissioner upon a showing of good cause.

(f) additional information as the commissioner reasonably determines to be necessary to determine the financial integrity of the management.

(3) An arrangement shall file with the commissioner a copy of the arrangement's Internal Revenue Service form 5500 together with all attachments to the form, at the time required for filing the form.

NEW SECTION. **Section 12. Failure to comply.** (1) Pursuant to 33-1-317 and 33-1-318, the commissioner may impose sanctions against a self-funded multiple employer welfare arrangement that fails to comply with the provisions of [sections 1 through 14]. The maximum fine may not exceed $5,000 for each violation.

(2) The commissioner may issue a notice of intent to revoke the certificate of authority of a self-funded multiple employer welfare arrangement that fails to comply with the provisions of [section 8,

9, or 11]. If, within 60 days of receiving notice under this subsection, the arrangement fails to file w the commissioner a plan to bring the arrangement into compliance with [section 8, 9, or 11], t commissioner may revoke the arrangement's certificate of authority. A revocation of a certificate authority is a contested case under the Montana Administrative Procedure Act.

(3) The commissioner shall adopt rules to provide sanctions for an arrangement that fails maintain the level of reserves required by [section 8]. The rules must be consistent with the provisions Title 33, chapter 2, part 13.

NEW SECTION. **Section 13. Violation by arrangement failing to obtain or maintain certificate c authority.** A self-funded multiple employer welfare arrangement organized or maintained in Montan without a certificate of authority is in violation of 33-2-101.

NEW SECTION. **Section 14. Application of insurance code to arrangements.** (1) In addition t [sections 1 through 14], self-funded multiple employer welfare arrangements are subject to the followinç provisions of Title 33:

(a) Title 33, chapter 1, part 4, but the examination of a self-funded multiple employer welfare arrangement is limited to those matters to which the arrangement is subject to regulation under [sections 1 through 14];

(b) Title 33, chapter 1, part 7;

(c) 33-3-308; and

(d) Title 33, chapter 18, except 33-18-242.

(2) Except as provided in [sections 1 through 14], other provisions of Title 33 do not apply to a self-funded multiple employer welfare arrangement that has been issued a certificate of authority that has not been revoked.

Section 15. Section 33-1-1111, MCA, is amended to read:

"**33-1-1111. How to show jurisdiction.** A person or entity may show that it is subject to the jurisdiction of another agency of this or another state or any subdivision ~~thereof~~ of this state or another state or the federal government by providing the commissioner with the appropriate certificate, license, or other document issued by the other governmental agency that permits or qualifies it to provide those

services. If it is not the practice of the governmental agency to issue a certificate, license, or other document establishing that the agency permits the person or entity to provide those services, the person or entity may show that it is subject to the jurisdiction of the agency by other means appropriate under the circumstances."

NEW SECTION. **Section 16. Codification instruction.** [Sections 1 through 14] are intended to be codified as an integral part of Title 33, and the provisions of Title 33 apply to [sections 1 through 14].

-END-

- BILL NO - REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE ------- REREFERRED ---- DATE READ

SB0329	WATERMAN, MIGNON 2/08	2/16		REVISE LONG-TERM HEALTH CARE INSURANCE PROVISIONS DO PASS 2/16 VOTE: UNAN		2/16
SB0332	WELDON, JEFF 2/08	2/15	2/16	REVISE LANDLORD TENANT LAW PASS AS AMENDED 2/17 VOTE: 6-3		2/17
SB0335	MILLER, KEN 2/08	2/16		REVISE RETAIL INSTALLMENT SALES DO PASS 2/16 VOTE: UNAN		2/16
SB0356	WILSON, WILLIAM 2/10	3/17		REGULATE TELEPHONE SOLICITATION TO COUNTER FRAUD TABLED ON 03/17 VOTE: 5-4		
SB0376	CHRISTIAENS, CHRIS 2/11	2/17		REGULATE SELF-FUNDED MULTIPLE EMPLOYER WELFARE ARRANGEMENTS DO PASS 2/17 VOTE: UNAN		2/17
SB0380	JACOBSON, JUDY 2/13	2/17		AMEND SMALL EMPLOYER HEALTH INSURANCE AVAILABILITY ACT PASS AS AMENDED 2/17 VOTE: 7-2		2/17
SB0400	GROSFIELD, LORENTS 2/15	2/17		REQUIREMENTS FOR FLOW THROUGH HOT SPRINGS POOLS PASS AS AMENDED 2/17 VOTE: UNAN		2/17
SB0403	MILLER, KEN 2/21			HEALTH CARE REFORM BASED ON MEDICHOICE VOTE:		
SB0405	JACOBSON, JUDY 2/15	2/17		ALLOW VOLUNTARY PURCHASING POOLS; CERTIFICATION BY COMMISSIONER OF INSURANCE PASS AS AMENDED 2/17 VOTE: UNAN		2/17
SB0408	SPRAGUE, MIKE 2/16	2/28		MONTANA STATE LOTTERY CONTRACTS FOR SUPPLIES AND SERVICES PASS AS AMENDED 2/28 VOTE: UNAN		3/01
SB0411	FRANKLIN, EVE 2/17	3/16		REQUIRE HEALTH INSURANCE FOR CHILD SUPPORT BE AVAILABLE AT BOTH RESIDENCES TABLED ON 03/16 VOTE: UNAN		
SJ0019	SPRAGUE, MIKE 3/16	3/21		JOINT RESOLUTION FOR INTERIM STUDY OF STATE-OWNED FINANCIAL INSTITUTION DO PASS 3/21 VOTE: UNAN		3/22

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By **CHAIRMAN JOHN HERTEL**, on February 17, 1995, at 8:00 a.m.

ROLL CALL

Members Present:

Sen. John R. Hertel, Chairman (R)
Sen. Steve Benedict, Vice Chairman (R)
Sen. William S. Crismore (R)
Sen. C.A. Casey Emerson (R)
Sen. Ken Miller (R)
Sen. Mike Sprague (R)
Sen. Gary Forrester (D)
Sen. Terry Klampe (D)
Sen. Bill Wilson (D)

Members Excused: N/A

Members Absent: N/A

Staff Present: Bart Campbell, Legislative Council
Lynette Lavin, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing:	SB 376, SB 380, SB 400, SB 405
Executive Action:	SB 376 DO PASS
	SB 400 DO PASS AS AMENDED
	SB 332 DO PASS AS AMENDED
	SB 380 DO PASS AS AMENDED
	SB 405 DO PASS AS AMENDED

HEARING ON SB 376

Opening Statement by Sponsor:

SEN. CHRIS CHRISTIAENS, SD 23, Great Falls, presented **SB 376,** an act that would provide for the regulation of the self-funded Multiple Employer Welfare Arrangement (MEWA), and required other provisions with that regulation.

Proponents' Testimony:

Tim Filz, Attorney, Association Employers of Montana and Multiple Employer Welfare Arrangements (MEWAs), stated, first of all, federal law generally preempted state regulation of welfare benefit plans. He said welfare benefit plans included certain types of multiple employer welfare arrangements, so, as a general statement, there was no capability by the state to regulate MEWAs. He declared there was; however, an exception which said states could regulate MEWAs to the extent they were not inconsistent with the Employee Retirement Income Security Act of 1974 (ERISA). ERISA also stated one could not be a welfare benefit plan or a MEWAs to be an insurance company and **Mr. Filz** said currently, there was a void in the State of Montana with respect to the regulation of MEWAs. He thought this encouraged MEWAs to form without regulatory authority and invited the Insurance Commissioner to attempt regulating MEWAs without guidance from the legislature.

Mr. Filz said the MEWA industry worked with the Insurance Commissioner's office for the last 8 months to draw up a bill which regulated MEWAs in an appropriate manner that didn't violate ERISA. He stated the bill did that in the following respects; (1) it defined MEWAs so they knew if a MEWA was in compliance with the law of the state; (2) it provided for certification process; (3) it required minimum funding and reserve levels; (4) it provided for the reporting requirements; and (5) provided the penalties and remedies for entities which did not comply with the Act. **Mr. Filz** explained it was a compromise bill that included some things they were not thrilled with and it included things the Insurance Commissioner's office may not be thrilled with; however, it was a total package which represented an appropriate regulatory scheme that protected the citizens of the State of Montana, while at the same time did not violate ERISA.

Gary Spaeth, Chief Council, State Auditor's Office, on behalf of Insurance Commissioner O'Keefe said they strongly supported **SB 376**; as **Mr. Filz** pointed out they worked with them. He stated under ERISA they could regulate MEWAs in a way which was consistent with the ERISA laws; however, that meant a lot of money and time spent in litigation about what that meant and what other states did. He expressed the way to do it was to sit down and compromise, and the number one priority for the people of Montana was the fiscal solvency of MEWA because if a MEWA went broke the people were hurt. **Mr. Spaeth** asserted there were political and economic repercussions, but more importantly, there were human repercussions, and that dealt with fiscal solvency, and that was what the bill emphasized.

Lloyd Lockren, Montana Contractors Health Care, handed out MCA Health Care Plan booklet, **EXHIBIT #1**, and explained the benefits therein, so the committee had some sense of what the employers of this state were doing to the multiple employer plans.

Rick Larsen, Employee Benefit Management Services, said five of their clients covered approximately 200 employers out of 20,000 in the State of Montana. He said basically what they did was to band together for efficiency and the passage of the bill would enable those entities to buy reinsurance and open up the market for them. **Mr. Larsen** claimed right now they were in a void; they had no legislation which said it was legal or illegal to exist; however, with passage of the bill, they would have a market open up.

Diane Ruff, President of Associated Employers of Montana, commented they sponsored a health benefit trust for their members in this arrangement since 1991, and currently covered about 1700 employees. They worked with the Insurance Commissioner's Office on behalf of the Board of Directors of her organization. She urged support of **SB 376.**

Bob Bachini, Gallatin Medical Manager's Association, read his testimony, **EXHIBIT #2.**

Larry Akey, Montana Association of Life Underwriters, supported the legislation and believed the bill was a good start on the regulation of solvency and other aspects of Multiple Employer Welfare Arrangements. He said the courts had clearly stated states could regulate MEWAs and inquired, why would insurance agents care? He expressed first of all, as they moved into health care reform more and more, people might look at self-insured activities. They believed it was important, as people moved into the self-insured market, that the state maintained some control and also, a number of his agents sold products for MEWAs. As unauthorized, unlicensed, insurers, his agents might very well be at personal financial risk without that kind of legislation. **Mr. Akey** contended they would work to strengthen that legislation as it moved through the process.

Opponents' Testimony: None.

Questions From Committee Members and Responses:

SEN. MIKE SPRAGUE referred to **Larry Akey**'s statement to pledge to strengthen this legislation as it moved through the process; what did that mean? **SEN. SPRAGUE** said he indicated in his testimony they believed that was a good start. Their organization was not part of the discussion between the MEWAs and the Commissioner's office although they would have a direct stake in the issue. He thought about bringing some amendments to the committee; however, given where they were in the process, he decided to ask for a do pass and work with the sponsors as it moved through the process.

SEN. CASEY EMERSON asked **Lloyd Lockren** when this started in Billings. **Mr. Lockren** replied they started in 1988 but not in Billings.

Closing by Sponsor:

SEN. CHRISTIAENS stated what the committee heard was a compilation of 8 months of hard work and it showed a good faith effort on everyone's part to make sure Montanans, particularly with MEWAs, were afforded good health coverage. He said the keys to that were the employer pooling ability which allowed them to purchase health coverage and the ability to purchase reinsurance. **SEN. CHRISTIAENS** claimed this was important, ensuring there were adequate reserves in case there was a problem in the solvency and because of the uniqueness in which they were exempt under ERISA. He believed the legislation was extremely important.

EXECUTIVE ACTION ON SB 376

Motion/Vote: **SEN. STEVE BENEDICT MOVED SB 376 DO PASS.** The motion **CARRIED UNANIMOUSLY** by voice vote.

HEARING ON SB 380 & SB 405

Opening Statement by Sponsor:

SEN. JUDY JACOBSON, SD 18, Butte, presented two bills together, **SB 380** and **SB 405,** to ease the growing problem of Montanans without health care. She would try to give some common sense reasons why it was a good idea for the State of Montana. She stated 42% of Montanans worked for firms with 25 or less employees; 70% worked for firms with 100 or fewer. She said those firms and their employees were at a disadvantage in the insurance market. She insisted small employers were less likely to offer insurance for a number of reasons, accessibility and affordability and both the bills relied on voluntary participation.

SEN. JACOBSON, said **SB 380** expanded small business group reform and applied the same rules to everyone in the purchasing pool. She said that helped with the simplicity of administration and was easier for the consumer to understand. She explained the bill expanded small group reform to self employed business people through groups of 1 to 100. She said earlier that 70% worked for firms, which was 75% of the working people. She asked if someone who owned a business or farm was a greater health risk than someone who worked with a group of people. She remarked, wouldn't that group of people, the self-employed, have the same advantages of access that were afforded to larger groups and under present law, groups of 3-25?

SEN. JACOBSON declared she was well aware of the risk adjustment for a group of one; however, she believed the advantages well outweighed the disadvantages. She said the group should not be

SENATE STANDING COMMITTEE REPORT

February 17, 1995

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration SB 376 (first reading copy -- white), respectfully report that SB 376 do pass.

Signed: John Hertel
Senator John R. Hertel, Chair

Amd. Coord.
Sec. of Senate

411331SC.SPV

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 1
DATE 2-17-95
BILL NO. SB376

MCA HEALTH CARE PLAN

SUMMARY PLAN DESCRIPTION

Including Dental and Vision Benefits

for YOU and YOUR dependents

July 1, 1994

The original of this document is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694.

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 2
DATE 2-17-95
BILL NO. SB 376

GALLATIN MEDICAL MANAGERS ASSOCIATION

SB 376
Hearing: Friday, Feb. 17, 1995 8:00 in room 410

Several years ago, a group of health care providers in the Bozeman area established a public benefit corporation known as the Gallatin Medical Managers Association. Members of the association often discussed the problems most of them had been having providing health benefits to their employees. The clinics ranged in size from 2 to 14 employees and the cost of purchasing a commercial policy was prohibitive and many times unavailable at any price. As the association grew, participating employers believed that because of their size, they might be able to pool for the purpose of purchasing health benefits for their employees.

The group approached Blue Shield, Travelers, and other insurers, however, none were interested in writing coverage to the association, especially as a "new group". In 1993, the association established a self-funded trust into which each employer contributed and from which the claims of the association's employees were paid.

The trust has flourished and been extremely successful. Through this MEWA, employers have been able to provide their employees with comprehensive health benefits which they would otherwise have been unable to provide. In addition, the association is happy that their substantial reserve fund account funds are held locally, thus their money is staying in Montana.

CONT.

During the past four years, many alternatives have been proposed for improving Montanan's access to health care and health insurance. Allowing employers to pool their resources for the purpose of funding employee benefits is a huge step in that direction. I encourage you to help Montana employees and employers by giving full support to this beneficial legislation.

Gallatin Medical Managers Association

Bob Backus speaking for
Linda Mirante, Pres. of the Association

- BILL NO - REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE -----
-- RereferRED ---- DATE READ

SB0350		2/20	3/14		CONCUR AS AMENDED 3/15 VOTE: 10-8		3/16
SB0354	FORRESTER, GARY	2/27	3/15	REGISTRATION OF CONSTRUCTION CONTRACTORS BY DEPARTMENT OF LABOR	CONCUR AS AMENDED 3/21 VOTE: 16-2		3/22
SB0374	HARP, JOHN	2/27	3/08	REVISE CERTAIN LAWS RELATING TO THE STATE FUND	CONCUR AS AMENDED 3/9 VOTE: 16-2		3/09
SB0375	BENEDICT, STEVE	2/27	3/06	REVISE WORKERS' COMPENSATION AND OCCUPATIONAL DISEASE LAWS	CONCUR 3/7 VOTE: 12-6		3/07
SB0376	CHRISTIAENS, CHRIS	2/20		REGULATE SELF-FUNDED MULTIPLE EMPLOYER WELFARE ARRANGEMENTS	VOTE:		
SB0384	BENEDICT, STEVE	2/27	3/06	WORKERS' COMPENSATION COMPETITIVE RATING ACT	CONCUR 3/7 VOTE: 18-0		3/07
SB0392	GAGE, DELWYN	2/22	3/07	GUBERNATORIAL PARTICIPATION IN PACIFIC NW ECONOMIC REGION	CONCUR 3/7 VOTE: 18-0		3/07
SB0400	GROSFIELD, LORENTS	2/22	3/07	REQUIREMENTS FOR FLOW THROUGH HOT SPRINGS POOLS	CONCUR 3/7 VOTE: 18-0		3/07
SB0408	SPRAGUE, MIKE	3/04	3/15	MONTANA STATE LOTTERY CONTRACTS FOR SUPPLIES AND SERVICES	CONCUR AS AMENDED 3/15 VOTE: 16-2		3/16

BILL NO	REFERRED	HEARING	OTHER CONSIDERATION DATES	EXECUTIVE ACTION/DATE/VOTE	REREFERRED	DATE READ
	3/06	3/09		TABLED ON 03/13 VOTE:		
SB0074	DOHERTY, STEVE		ALLOW INDIVIDUAL INCOME TAX DEDUCTION FOR ACTUAL EXPENSES FOR PRESCRIPTIONS			
	3/06	3/09		TABLED ON 03/13 VOTE:		
SB0322	JACOBSON, JUDY		PROHIBIT WAITING PERIOD FOR PREEXISTING CONDITION UNDER CERTAIN CONDITIONS			
	3/04	3/09		TABLED ON 03/16 VOTE:		
SB0341	HOLDEN, RIC		AMEND THE MONTANA COMPREHENSIVE HEALTH ASSOCIATION PLAN			
	3/04	3/09		CONCUR AS AMENDED 3/16 VOTE:		3/17
SB0376	CHRISTIAENS, CHRIS		REGULATE SELF-FUNDED MULTIPLE EMPLOYER WELFARE ARRANGEMENTS			
	3/04	3/09		CONCUR AS AMENDED 3/16 VOTE:		3/20
SB0380	JACOBSON, JUDY		AMEND SMALL EMPLOYER HEALTH INSURANCE AVAILABILITY ACT			
	3/04	3/08		TABLED ON 03/16 VOTE:		
SB0405	JACOBSON, JUDY		ALLOW VOLUNTARY PURCHASING POOLS; CERTIFICATION BY COMMISSIONER OF INSURANCE			
	3/04	3/07		TABLED ON 03/13 VOTE:		
SJ0014	JACOBSON, JUDY		RESOLUTION STATING HEALTH CARE ACCESS PLANS HAVE BEEN RECEIVED			
	3/04	3/07		CONCUR AS AMENDED 3/13 VOTE:		3/15

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

JOINT SELECT COMMITTEE ON HEALTH CARE

Call to Order: By **CHAIRMAN STEVE BENEDICT**, on March 9, 1995, at 5:30 p.m.

ROLL CALL

Members Present:
Sen. Steve Benedict, Chairman (R)
Rep. Scott J. Orr, Vice Chairman (R)
Sen. Mike Foster (R)
Rep. Duane Grimes (R)
Sen. Judy H. Jacobson (D)
Sen. Ken Miller (R)
Rep. Bruce T. Simon (R)
Rep. Carolyn M. Squires (D)
Rep. Carley Tuss (D)

Members Excused: Sen. Dorothy Eck (D)

Members Absent: None

Staff Present: Susan Fox, Legislative Council
David Niss, Legislative Council
Jennifer Gaasch, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing:	This was a meeting where public testimony was given on HB 446, HB 531, HB 533, SB 322, SB 341, HB 85, HB 202, SB 62, SB 74, and SB 376
Executive Action:	None

{Tape: 1; Side: A.}

Public Testimony:

Kate Cholewa, representing Montana Women's Lobby, said on HB 446, page 3, defined at the top of the page "A health benefit plan may not define a pre-existing condition more restrictively that these items." In (b) it talks about an ordinarily prudent person seeking medical advice. On (c) they have pregnancy existing on the effective date of the coverage of the insured person. She said they would like to see pregnancy not treated any differently than other pre-existing conditions. An ordinarily prudent women

if they trace her date of pregnancy back to a week before her policy went into effect she is an ordinarily prudent person with a pre-existing condition who would have still sought medical advice for that condition. They would like to see pregnancy not treated differently.

Tom Hopgood, representing the Health Insurance Association of America, said he would like to address HB 446 and had amendments they would like to offer to that bill. **(EXHIBIT #1)** He said the amendments were mostly technical. On line 5, page 3, they think that would be a good idea to strike that so they do not write a pre-existing condition on pregnancy. He said the bill sets a pre-existing condition for a health benefit plan, look back for 3 years, exclude it, then for a period of 12 months. It is a little better than it is for other types of disability policies which are on the market. He said he had some amendments to propose. **(EXHIBIT #2)** He said this bill said once a pre-existing condition is covered under a health insurance policy they, can transfer their health insurance policy to another company and they would not have to satisfy the pre-existing condition again. There is a provision in HB 533, Section 3, page 2, which would address the spread of premium increases. When a person becomes ill some health insurance companies have taken that person's premiums and increased them because of adverse claims experience. In Section 3, the only thing that should increase an individual's policy is an increase in his/her age. Any other reasons to increase that policy have to spread across the entire market. The company cannot take revenge on a person for getting sick. The way the bill was originally written it would apply to group policies. The thought was that group policies were already sufficiently covered under the small group act. He said the amendments would take care of that. He said they had one amendment prepared for HB 531. **(EXHIBIT #3)** He said that amendment was on page 7, line 30, and has to do with the disclosure requirements. Health care insurers and producers are to provide, at the point of application, a set of materials continuing on page 8. They think that is a lot of material. What it appears they really want is a general history of what is going on with the premiums to particular policies. They feel by the company providing a general narrative of what has gone on with the companies premiums over the past 5 years would be sufficient for that. He said they were still discussing things between the interested parties.

Claudia Clifford, representing the State Auditor's Office and the Commissioner of Insurance's Office, said was going to address HB 446, HB 533, and SB 322. The goal is to address portability. They key to understanding portability is whether or not they can even get their next policy. She that is what the issue of guaranteed issue is about. These bills deal with pre-existing conditions. She said in current law, a pre-existing condition is a problem that has occurred, there is a medical diagnosis, it is something that is documented. In one of the bills they add a definition of what pre-existing means. It would be what any

prudent person would have sought treatment for. That makes it more difficult for the consumer. It is hard for them to seek recourse if they disagree with the insurance company. It is not in the best interest. There is the look back period issue. How far back in someone's history do they look back and say this is a condition which they are either not going to cover or treat differently. In current law it is a 5-year look back period. One of the bills says they would only look back 3 years, but it then deals with rider conditions. It segregates some of the pre-existing conditions. It says that some pre-existing conditions are bad enough that they will not only apply a 12 month waiting period, but they want to note those conditions in the contract and make them wait longer on getting coverage for that. That kind of rider condition in one of the bill says that they will not cover those conditions for 4 years. The insurance company would argue that if they could not rider some conditions, especially in individual policies, they would probably choose to reject that person all together. Riders are not currently dealt with in law. Riders are not allowed because they are not dealt with and all the law says is that if a person has a past medical problem they can only have a 12 month medical problem. They need to deal with riders somehow if they are going to be allowable. If a person has a condition that has not been ridered, the bills have what is an attempt to waive the 12 month waiting period. If a person has had previous coverage and they did not have much of a lapse in coverage they do not have to go through the 12 month waiting period. That is very important for portability and as a good move in the bills. One bill says that the lapse in coverage can be only 30 days and another bill says 60 days. There is also a difference as to when that applies. They recommended they put in the 60 days and that they make it to that date of application. The day of application is controlled by the consumer. Companies vary on how quickly they can issue policies. She said if the idea was not to restrict any more on a person when they are going to their next policy then riders do not do that. Currently, if they leave the bill unamended, insurance companies can look back in someone's past history back to birth and rider any condition. They recommended that they apply the same look back period to riderred conditions as they do to the other pre-existing conditions of 3 years. They acknowledge that there is a complex issue of riders when they move to another policy. Companies have different underwriting policies. The new company may want to rider a whole new set of conditions. When they had the first policy there was only one ridered policy and when they go to the next policy there may be 4 or 5 different riders. Do they want to allow that or do they want to address that there would be no more riders in the next policy. In response to a question regarding which bill she was referring to, **Claudia Clifford** replied essentially she was talking about all three bills at one time. She said they support the concepts in all three bills of improving pre-existing conditions and improving portability. She said with the issue of riders when going to a new policy they want to allow consider that if they have a rider condition on their first policy for 4 years and they have had that policy for

2 years, when they go to the new policy do they receive the same kind of credit that they got from pre-existing conditions and they only have to fulfill 2 more years of a rider condition. She said, dealing with the retroactive applicability of a bill they believe to retroactively to allow for riders is unconstitutional under contract law. She said she had a copy of the GOP health plan in the news. **(EXHIBIT #5)** She offered amendments to SB 322 **(EXHIBIT #5)**, HB 446 **(EXHIBIT #6)**, and HB 533 **(EXHIBIT #7)**.

Larry Akey, representing the Montana Association of Life Underwriters, said they supported HB 446 and HB 533 when they were before the House Select Committee on Health Care. They support the amendments proposed by **Tom Hopgood.** He said it is true that an ordinarily prudent person does add a new standard or reintroduces a standard to the statute on pre-existing conditions. He said they did not feel that was a necessary part of the statute when the look back period was 5 years. They felt it was important to bring that standard back in if the were going to change the look back period to 3 years. They believe the rider language as it is currently contained in HB 446 as amended in the proposed amendments by **Tom Hopgood** are good and solid rider exceptions. He said there was an issue of retroactivity. That is a danger that a force to find a retroactive application of the statute unconstitutional. However retroactive applicability does solve a major problem that was in the market and will remain in the market. Riders were commonly used in insurance policies prior to a departmental interpretation about 1 ½ years ago. There are a number of policies out there today that have riders on them. They are concerned without retroactive applicability that an insurance company in the future find itself in court over that rider. They suggest a better way would be to not strike the section on retroactive applicability and the question of its constitutionality is to add a section on severability. They think that would address the issue should the courts find that they cannot retroactively apply those provisions they would not have to throw out the entire statute. They support tax deductibility of insurance premiums. They asked that they treat individual premiums, premiums written by self-employed individuals in the same way they would treat health insurance premiums in a corporation or another business. They would like to see health care treated as a deductible expense from the first dollar across the board, but that would be very expensive. It is up to this committee and this Legislature to see how much tax fairness they can afford in the area of health care. He said HB 202 was the bill that addresses insurance premiums. They would at a minimum ask that they address HB 202. SB 376 is an effort to regulate multiple employer welfare arrangements (MEWA). He said there are two reasons that insurance agents care about the regulation of multiple employer welfare arrangements. One is that they have a direct impact with the way they do health care reform in the state of Montana. The tighter things are in the regulated market, the higher they raise the limit on the number of employees in a small employer group under the small employer act. He said the more likely it will be that they will see

leakage into the self-funded market because those self-funded plans are exempted from mandated benefits and other provisions of the state insurance code. He said to the extent that they have multiple employer welfare arrangements out there that are not regulated or are very weakly regulated they are concerned that any efforts they make to provide health care reform will only end up forcing people into the unregulated market and escaping all of the things the Legislature currently is trying to accomplish. Insurance agents that market products for unregulated MEWAS may be exposing themselves financially since they are selling products for what is essentially an unauthorized insurer. Their A and O coverage probably will not cover the consequences of any financial insolvencies. It is important for the agents who are offering MEWAS that they have some sort of regulation on the books so that exposure is not there. He said that SB 376 was considered the great compromise. He said there were 2 groups that were not involved in striking that compromise. There are groups that might like to form MEWAS, but under that bill they would be prohibited. Insurance companies and insurance agents were also not involved. He asked that they give SB 376 some scrutiny. He said the supporters of SB 376 would have the people believe that they did not have to accept any form of regulation and that ERISA wipes out any efforts of the state to regulate multiple employer welfare arrangements. He said it is true that they cannot touch a single employer self-funded plan. He said ERISA says they cannot touch fully-insured MEWAS. He said they cannot regulate them except by regulating the insurance companies that provide them insurance. They cannot touch MEWAS that have been exempted by the Secretary of Labor and there are none of those in Montana. They cannot touch MEWAS that are also employee welfare benefit plans. ERISA defines what an employee welfare benefit plan. MEWAS that are not also employee welfare benefit plans can be regulated by state insurance codes. They supported SB 376 in the Senate with promise to work to strengthen it. There are three areas that the committee should look at. SB 376 sets up a dual track. It says that 4 MEWAS that currently exist. For MEWAS asking for a certificate of authority do not have to comply with demonstrating to the commissioner that they are financially solvent. New MEWAS do have to do that. SB 376 sets up a bona fide association as one of the requirements of being a MEWA. That says they can not form a new bona fide association and create a MEWA for 5 years. The bill creates certain exceptions and exemptions from the insurance laws. The compromise does provide some coverage by the insurance laws. He said on page 8, section 14, title 33, chapter 8, of SB 376, they say that they are going to comply with that except for the fact that they do not want to comply with 33-18-242. 33-18-242 is the section of the statute that gives an individual that has been injured by an insurance company an independent cause of action. They think if it is good for the insurance companies it is good for multiple employer welfare arrangements that are not also employee welfare benefit plans. They ask that they would also consider extending some of the sections of the insurance code to MEWAS. They have said in SB 376 that they are willing to subject

themselves to examinations, but not to approval of forms. It seems that they need both. They exempt themselves from contract language. One of the sections they are willing to comply with is privacy and information chapter. All of those are things the committee should look at and they would submit amendments in those areas. They think there should be some disclosure to the people who are receiving their health care through multiple employee welfare arrangements. They think a MEWA should disclose on the face of the policy or contract that it has with its insured that it is a multiple welfare arrangement that is not an insurance company and that it is not covered by all the guarantees of the statute affecting insurance companies and it is not covered by the guarantee association. He said they are issues they need to address if they are going to report out SB 376. They can either make it clear that SB 376 only applies to those MEWAS that are also employee welfare benefit plans and that all the laws of insurance in Montana affect those MEWAS that are not also employee welfare benefit plans or they can work to tighten up SB 376 in the ways he recommended.

Susan Good, representing Heal Montana, read her written testimony. **(EXHIBIT #8)**

Tanya Ask, representing BlueCross BlueShield of Montana, said they supported HB 446 and agree with the proposed amendments. They support HB 533 and agree with the proposed amendments. She said riders were important because in the individual market place is not a guaranteed issue market place. Riders allow individuals that might not get coverage to be able to get coverage for everything else accept that riderred issue. She said they supported the retroactive applicability. They feel there are problems due to the way that particular provision had been interpreted over the last year. She said she would like to comment on having portability of the riders. She said under riders, those individuals are not guaranteed issue. Even though that would allow portability in the individual market it does not say that say that an insurance company would necessarily going to take that risk. Insurance companies have different underwriting criteria. One may accept someone with a rider and anther may not accept that without a rider. She said she said the Comprehensive Health Care Authority is a pool of last resort. They have been in the process of making the benefits better under state law. She said they were trying to move those benefits up. She said that they would like to do that and they are asking to keep the potential cost in mind. They would like SB 341 that contains other provisions that the board felt changes were necessary to in order to make the operation more viable. Tax deductibility will be decided on the overall financial constraints on Montana. She said they have endorsed HB 202 dealing with strictly the deductibility of premiums for individuals. She said this was an area of concern by small businessmen who had their own individual contracts. They would like the same benefit as larger groups have. She said they would support SB 376 with the attached amendments. They would like those types of arrangements to be on

equal footing. There are already new potential to be on equal footing with those already in the self funded multi-employee welfare arrangement market place. The amendments provide basic protection such as privacy protection, newborn coverage and other things that Montana's previous legislatures have felt were important. ERISA qualifying MEWAS are precluded from some portions of state law, but not every single MEWA is.

{Tape: 1; Side: B; Approx. Counter: .1; Comments: Tanya Ask was cut off while she was talking.}

She said this legislation grants a certificate of authority. That is a license to be an insurer. When they are licensed as an insurer, consumers think it is an insurance company that is subject to all of the regulations of the state and the protection are afforded thereby. She said they were concerned with the certificate of authority. She asked that they take a look at the way it was written because they feel it may preclude some people from becoming a MEWA until the have been a bona fide association for a period of 5 years. She said there are things that people feel they cannot live with under the insurance regulation. She said one of those things was a form filing requirement. The insurance department reviews the benefit agreements that Montana consumers would receive. Another was how the contract would be laid out so that people would have an idea what the benefits under that contract would be. Another was a law that regulated how insurance companies, health service organizations, HMO's, and others conduct utilization review. She said there were very strict requirements put on there for the benefit of Montana consumers. They asked that the particular set of amendments be given careful consideration.

Tim Filz, a attorney with the Brown law firm in Billings and represents an number of MEWAS, he said he would talk about SB 376. He said a MEWA was a Multiple Employer Welfare Arrangement. Any time two or more employers get together and provide welfare benefits for their employees that is a MEWA. He said the exception to that is if the employers are related or controlled entities. He said ERISA says that state law cannot regulate employee welfare benefit plans. ERISA says that not withstanding that prohibition states can regulate insurance companies. The states can heavily regulate insurance companies even though there is an impact on a welfare benefit plan. Any employer that adopts a plan to provide health benefits for its employees is a welfare benefit plan whether that is fully insured or self funded. The state or the federal government says that Montana cannot directly regulate any employer to the extent that they provide welfare benefits to their employees. The federal government says that the state can regulate the insurance companies. The federal government says that the states can regulate multiple employer welfare arrangements to the extent that those requirements are not inconsistent with ERISA. ERISA says that under no circumstances can the state label, call, or describe a welfare benefit plan as an insurance company. That means if they have a

welfare benefits plan, it is not an insurance company and it can not be regulated as an insurance company. A single employer or certain types of multiple employer plans are also welfare benefit plans. He said the MEWA bill in defining what entities are allowed to register as MEWAS is limited to those kinds or arrangements which would qualify under ERISA as welfare benefit plans. A welfare benefit plan which would involve multiple employers is limited to arrangements that are either single industry, of if there is a bona fide employment-related bond between the employers. He said if there is that kind of relationship, then they would be a welfare benefit plan under ERISA entitled to ERISA pre-emption.

ERISA says you can regulate MEWAS if they do not violate ERISA and if they are not called insurance companies. That is the reason they allow a little bit of regulation, not a lot. He said they can be regulated if they are done consistent with the fundamental concepts and not inconsistently with ERISA. With the MEWA legislation they have defined what MEWAS are which is not currently done. They provide for a certification process. MEWAS that do not come through the process are going to be ruled unauthorized insurers. The bill provides for minimum reserves and for minimum funding. That is very crucial. It provides for reporting requirements. The act provides for penalties for MEWAS that do not comply and provides for remedies in the form of liquidation procedure for a MEWA. They agree to that regulation because it will ensure that only good, viable, healthy MEWAS exist. He said there is a dual tract because there are a number of MEWAS out there and they are not sure how many individuals are being provided benefits under existing MEWAS. They think that by coming up with some rules, such as an association must be in existence for at least 5 years prior to sponsoring a MEWA. They think that is a sound rule, but would like it to be around 2 or 3 years. They exempted existing MEWAS because if there is a MEWA that was formed 4 ½ years after the association was formed and was providing benefits to 500 individuals, are they going to say that they were going to disallow that MEWA that otherwise would meet the requirements. He said they need to say that the ones that were in existence before then can meet the requirements they will allow them to exist. They do not want to encourage the rush to form MEWAS. They are not strongly against disclosure. He said the kind of language in 33-11-1047 with respect to risk retention groups is probably an appropriate type of language to use. He said that they did agree to have all of the Fair Practices Act provisions incorporated into the MEWA bill except for the private cause of action. That is because ERISA provides a private cause of action for individuals agreed by a welfare benefit plan. He said the states can regulate MEWAS, but if it is inconsistent with ERISA. ERISA provides a comprehensive private cause of action and in having done that it is inconsistent for the state to have to create an independent private cause of action. There are things that are allowed under ERISA that are not allowed under a claim against an insurance company.

Lloyd Lockrem Jr., representing the Montana Contractors Health Care Trust, said he would like to address section 33-18-242. He said the primary function of ERISA is to protect the participant once an employer has decided to have employee benefits. He said ERISA does require full disclosure. He said "U.S. district courts have exclusive jurisdiction over civil and criminal action brought under Title 1 of ERISA. Except that cases pertaining to benefit recovery brought by participants may also be brought in state courts. U.S. district courts have jurisdiction to grant relief without respect to the amount in controversy or the citizenship of the parties. The court may decide who shall pay the court costs and legal fees. If you as a participant are successful the court may order the person you have sued to pay these costs. If you lose the court may order you to pay these costs and fees for example that finds your claim frivolous. In addition to creating rights for the plan participant, ERISA imposes duties upon the people who have the responsibility for the operation of the employee benefits plan. The people who are on the plan are called your fiduciaries of the plan and have a duty and in the interest of you and other planned participants. No one else including your employer, your union or any other person may fire you or otherwise discriminate against you in any way to prevent you from obtaining a welfare benefit or exercising your rights under ERISA." He said they have set up a review procedure and each time they sit, they sit not as an employer, but as a trustee representing the participant. Legal action to recover lost benefits under this plan may not be brought until they have gone through the administrative procedure. They do not have to appear, but they always have that right. He submitted if and when the insurance industry provides employee benefits at affordable costs to employers in Montana who genuinely want to provide benefits, particularly health care, MEWAS will go away. He said they would commit to the committee if there was any possibility to resolution between the parties they would pledge to work towards that.

Jerry Driscoll, said he had heard a statement made that it was not known if there was any plan approved by the Secretary of Labor. Under the definition, collectively bargained, or by rural electric, or by rural telephone cooperatives are exempted from any state regulation. There are probably 29 of them so far that were approved by the United States Secretary of Labor. He said MEWAS work best when the group of employers form this and then they provide health insurance to their employees and there is portability between the employers because of the skills normally needed by those employers and the employees of anyone can transfer within that. It does not matter what the employer is, it is the skill that they want. The insurance is then portable between the employers. He said there should be some commonality of the employers.

CHAIRMAN BENEDICT replied that he understood there were some amendments that people would like to propose and they would like to have the amendments before executive action.

Lloyd Lockrem replied they would get them the amendments as soon as they could. He said he was trying to resolve an issue that has been in there.

Diane Ruff, representing Associated Employers of Montana, read from a handout. **(EXHIBIT #10)**

Gary Spaeth, the Chief Council at the State Auditor's Office, said the MEWAS they had come in contact with serve the people well. There are some that are not in Montana that have caused problems. When a MEWA goes insolvent that is where the problem occurs. He said that was what the bill was set up for. How to insure solvency. He said there is a MEWA scam business in other places. He said they were concerned if they did not have some control, it would happen in Montana. He said there are 22 cases that are the leading cases that are in a small area. He said they could either proceed to litigate a lot of issues or they could have a chilling effect. The major concern was solvency. He said the bill does what they set out to do. He said they did not want to seek to have extensive regulation for the fact that they are not in a regulatory climate. He said they looked at approval of forms and paper concerns which are important ways to regulate, but the are not equipped with staff to do that. He said this was a good starting point on regulating MEWAS. He said they do not even have a list of the MEWAS in Montana. He said the amendments **(EXHIBIT #11)** have been approved. He said they need a statement of intent because they set up a solvency standard, but if they become insolvent they did not put in the liquidation provisions of the statute and they have to adopt them by rule. The other provisions allow flexibility.

Bob Turner, representing the Department of Revenue, said he would address tax deductibility which included HB 85, HB 202, SB 62, and SB 74. He said he would like to give an idea of what is presently allowable in Montana law. **(EXHIBIT #12)** He addressed each bill and gave amendments that included an explanation of the amendments at the bottom of the page. **(EXHIBITS #13-16)**

Rick Larson, representing EBMS, said his company is Employee Benefit Management Services and they are in the business of administering employee benefit plans for single and multiple employer welfare arrangements. He said a lot of the protection comes under the Department of Labor and under ERISA. He said a lot of the things that are not covered in the bill are covered under federal law. He urged the passage of the bill with minimal amendments.

REPRESENTATIVE PEGGY ARNOTT, HD 20, said she was the sponsor of HB 533. She said in HB 533 the premium increases must be

distributed proportionably. She said insurers would not be able to selectively raise premiums on one individual with health problems. The would have to distribute the premium increases proportionally. It would make it so no one would be penalized for getting sick. She said the requirement that an individual has qualified for an insurance once they have done that and maintained coverage they do not have to go through another qualifying period. This bill is a small step forward. The 30 days was amended in committee. She said that was an acceptable length of time as amended.

Ed Grogan, representing the Montana Medical Benefit Plan and the Montana Medical Benefit Trust, said they Montana Medical Benefit Trust was a fully insured MEWA and the Montana Medial Benefit Plan provides the insurance for that MEWA. He said there are reams and reams of federal legislation and Department of Labor rules on MEWAS and before they were to make any dramatic changes, they should have a lawyer check to make sure they were not violating laws. He said the present law as in 33-22-110 says it is not a pre-existing condition unless they have seen a doctor. He said people are sick before they go see a doctor. The new rules allow for a ordinarily prudent person would determine whether or not the condition was pre-existing condition when filling out their application. The problem with waiting to see a doctor is they have had 3 claims that they have had to pay in the last year because it is only in the last year that it has applied. He said the law as it stands lets people with pre-existing conditions purchase insurance. He said previous to this year riders had allowed in Montana. They have said that riders and pre-existing condition are one in the same and they could only have a rider for 1 year. The changes are to make it so that they could not have riders. The law says 4 years and they believe that there should be no limit on the length of time for a rider. He said to put a 4 year limitation on a rider would be the same as saying that they would have to deny that person coverage. He said the new language in the bill that says a person can basically go 60 days without insurance and then sign an application should say that they be out of the market only 30 days and if they have an application within that 30 days period they would still be qualified. They support tax deductibility and any bill pertaining to that.

EXHIBIT #17 was passed out to the committee.

CHAIRMAN BENEDICT said he would open it up to anyone who wanted to address health care in general.

Tanya Ask, representing BlueCross and BlueShield of Montana, said she would like to address cost containment and early intervention and prevention. A group of people who have not been present are children who are not insured and not covered by Medicare or Medicaid. The Caring Program for Children sponsored by the Caring Foundation of Montana. This program is a private effort that is a cooperative effort on the part of physicians,

hospitals, insurance agents, physician assistants, nurse practitioners and the whole health care community as well as individuals and groups around the state. She said the program was a non-profit program which was started 1 ½ years ago. She said the idea was that frequently children do not receive primary preventive health care benefits when their parents are in transition. The program provides benefits for well child visits, regular office visits, x-ray lab services, and out-patient surgery. It is not designed to be 100% coverage, but it is designed to take care of most of the services that most children need. The cooperation of health care providers is important because those who participate in the program receive a lower level of reimbursement to cover the children. They know that they are going to be paid for taking care of that child, they will not have to worry about deductibles or co-payments, and that takes care of an administrative burden. This program has provided benefits for over 600 children in Montana. The reason they are bringing the program to the committee is to notify them, that the more dollars that come in the more they have to help the children. They are bringing the idea of a public private initiative. The idea would be to have a match and that there are so many public dollars before private dollars are put in.

Jeffrey H. Strickler, M.D., read his written testimony. **(EXHIBIT #18)**

{Tape: 2; Side: A.}

CHAIRMAN BENEDICT said that there was not a vehicle for this issue in the legislature. The wisdom of the people that chose the bills that came into this committee were such to take the bills that were alive in the process. He said that these presentations could best be made to the appropriations committee if **SENATOR DOROTHY ECK'S** bill made it to that process. He thanked them for making those concerns.

Questions from the Committee:

None

Tonya ASK
Exhibit # 9
3-9-95

Senate Bill 376
Draft Amendments
March 9, 1995

1. Page 1, Line 29 and 30
   Following: "Employers"
   Delete: "that has been in existence for period of not less than five years prior to"

2. Page 2, Line 1
   Delete: "during which time the Association"
   Insert: "which"

3. Page 4, Lines 3 and 4
   Following: "Requirements applicable"
   Delete: "only to arrangements organized after [the effective date of sections 1 through 14]"
   Add: "to all arrangements"

   Line 5
   Following: "arrangements"
   Delete: "formed after [other effective dates of sections 1 through 14]"

4. Page 5, Line 6
   Following: "for review"
   Delete: "and approval by the commissioner"

5. Page 8, Line 19
   Add: "(b) Title 33, Chapter 1, Part 5,"Renumber subsequent sections

6. Page 8, Line 21
   Add: "(d) Title 33, Chapter 15"

7. Page 8, Line 21
   Following: "Chapter 18"
   Delete: ", except 33-18-242"
   Add: "(e) Title 33, Chapter 19; (f) Title 33, Chapter 22, Parts 1, 5, 7, 10, 15, 16, 17, and 18; and (g) Title 33, Chapter 32."

8. NEW SECTION: Section 15 - **Disclosure**

B. 1. The MEWA shall issue to each covered employee a policy, contract, certificate, summary plan description, or other evidence of the benefits and coverages provided.

2. The evidence of benefits and coverages provided shall contain, in boldface type in a conspicuous location, the following statement: "THE BENEFITS AND COVERAGES DESCRIBED HEREIN ARE PROVIDED THROUGH A TRUST FUND ESTABLISHED BY A GROUP OF EMPLOYERS (name of MEWA). THE TRUST FUND IS NOT SUBJECT TO ANY INSURANCE GUARANTY ASSOCIATION. OTHER RELATED FINANCIAL INFORMATION IS AVAILABLE FROM YOUR EMPLOYER OR FROM THE (name of MEWA)." If the MEWA has excess insurance, the following statement shall be added: "EXCESS INSURANCE IS PROVIDED BY A LICENSED INSURANCE COMPANY TO COVER CERTAIN CLAIMS WHICH EXCEED CERTAIN AMOUNTS."

3. If applicable, the same documents shall contain in boldface type in a conspicuous location: "THE BENEFITS AND COVERAGE DESCRIBED HEREIN ARE FUNDED BY CONTRIBUTIONS FROM EMPLOYERS, EMPLOYEES, AND OTHER INDIVIDUALS ELIGIBLE FOR COVERAGE." (If the MEWA has excess insurance, the following statement shall be added: "EXCESS INSURANCE IS PROVIDED BY A LICENSED INSURANCE COMPANY TO COVER CERTAIN CLAIMS WHICH EXCEED CERTAIN AMOUNTS.") "THIS IS THE ONLY SOURCE OF FUNDING FOR THESE BENEFITS AND COVERAGES."

GARY SPAETH
Exhibit # 11
3-9-95

Amendments to Senate Bill No. 376

1. Page 1, line 13.
Insert "STATEMENT OF INTENT"

A statement of intent is required for this bill because the bill does not contain any provisions regarding supervision, rehabilitation and liquidation of self funded multiple employer welfare arrangement which fails to maintain the level of reserves as are required by section 8. The rules should be consistent with the provisions of Title 33, chapter 2, part 13 and only modify those provisions to the extent necessary to be consistent with the provisions and purposes of this act.

Page 5, line 24
Following 33-2-514
Insert: ". The commissioner in his discretion may waive the requirement of an actuarial opinion and require a report by an actuarial firm"

Page 7, line 12.
Following 33-2-514
Insert: ". The commissioner in his discretion may waive the requirement of an actuarial opinion and require a report prepared by an actuarial firm and upon a showing of good cause extend the filing date of the report by thirty days"

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

JOINT SELECT COMMITTEE ON HEALTH CARE

Call to Order: By **CHAIRMAN STEVE BENEDICT**, on March 16, 1995, at 6:00 p.m.

ROLL CALL

Members Present:

Sen. Steve Benedict, Chairman (R)
Rep. Scott J. Orr, Vice Chairman (R)
Sen. Dorothy Eck (D)
Sen. Mike Foster (R)
Rep. Duane Grimes (R)
Sen. Judy H. Jacobson (D)
Sen. Ken Miller (R)
Rep. Bruce T. Simon (R)
Rep. Carolyn M. Squires (D)
Rep. Carley Tuss (D)

Members Excused: None

Members Absent: None

Staff Present: Susan Fox, Legislative Council
David Niss, Legislative Council
Jennifer Gaasch, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing:	None
Executive Action:	SB 380, SB 322, SB 341, HB 466, HB 446, HB 533, HB 531, and SB 376.

{Tape: 1; Side: A.}

CHAIRMAN BENEDICT said it seemed like there were a lot of different philosophies when they came to this committee. He asked that those people directly involved join together and see if they could not come to a compromise. **Rick Hill** was the person who kept that group going. He said he would have **Rick Hill** walk through how the amendments would work that were being proposed and what changes would be made and the different bills that would be used as vehicles.

Vote:

The **MOTION CARRIED** with **SEN. JACOBSON** voting no.

Motion:

REP. SIMON said that his amendments were no longer necessary. **(EXHIBITS #11 & #12)**

Discussion:

SEN. FOSTER asked if they wanted to have the legislators on the task force.

CHAIRMAN BENEDICT said they voted on the amendments of the bill that stripped everything on the bill.

Susan Fox said that if they wanted the amendments in **EXHIBIT #10** to override just those sections that they adopted in the amendments of **EXHIBIT #9.**

David Niss said that was going to be the effect of them.

Motion/Vote:

SEN. FOSTER MOVED to add legislators to be members of the task force. The **MOTION CARRIED UNANIMOUSLY.**

Motion/Vote:

SEN. FOSTER MOVE HB 531 **DO PASS AS AMENDED.** The **MOTION CARRIED UNANIMOUSLY.**

EXECUTIVE ACTION ON HB 376

Discussion:

CHAIRMAN BENEDICT said there were amendments proposed by the State Auditor's Office and the MEWA's.

Gary Spaeth explained the amendments. **(EXHIBIT #13)**

Motion:

SEN. JACOBSON MOVED the amendments. **(EXHIBIT #13)**

Discussion:

CHAIRMAN BENEDICT said that the amendments were proposed in this form and the council would work with the drafters of the amendments to develop the exact language that fits the statute.

REP. GRIMES asked what the difference was between a certified actuarial opinion as opposed to a report.

Gary Spaeth said the difference was about $2,500. The opinion is done by the individual and the report is prepared by a firm.

REP. GRIMES asked if they would approve the actuary that did the report.

Gary Spaeth said they would work with the firm that would issue the report.

REP. GRIMES asked on the Statement of Intent it says that a Statement of Intent was required in order to address the supervision of rehabilitation and liquidation of MEWAS. He said they needed to write rules to close out MEWAS.

Gary Spaeth said that was correct.

Vote:

The **MOTION CARRIED UNANIMOUSLY.**

Motion/Vote:

REP. SIMON MOVED SB 376 **DO PASS AS AMENDED.** The **MOTION CARRIED** 9 to 1 with **REP. GRIMES** voting no.

EXHIBIT #14 was passed out at the beginning of the meeting for the committee members information.